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RUEHBU/AMEMBASSY BUENOS AIRES 4762
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TAGS: ETRD KIPR EIND BR
SUBJECT: U.S. COMPANIES PRESS TRADE MINISTER ON COMPULSORY LICENSING, TAXES, AND INFRASTRUCTURE

¶1. (SBU) Summary. In a May 9 meeting with newly-appointed Minister of Trade Miguel Jorge, representatives from the Brazil-U.S. Business Council outlined their thoughts regarding the direction of bilateral trade trends. Chief on their mind was the damage to Brazil's investment climate done by the GOB's May 4 decision to issue a compulsory license for Merck's anti-AIDS retroviral Stocrin (Efavirenz). Council officials also lobbied for changes in Brazil's byzantine tax regime (including signature of a bilateral tax treaty) as well as improvements in port and customs infrastructure. The Minister and his team stated that intransigence on the part of Merck had given the GOB no other option than to issue the compulsory license. They added that the GOB efforts to upgrade the tax system and import/export infrastructure were already in-train. End Summary.

¶2. (SBU) On May 8-9, a delegation from the Brazil-U.S. Business Council made the rounds in Brasilia, calling upon inter alia, Vice-President Alencar, the Ministry of External Relations (Itamaraty), congressional deputies, and the Ministry of Development, Industry and Commerce (MDIC). An industry association composed of 75 U.S. and Brazilian firms which do business locally, Council companies generate over 220,000 jobs in Brazil. Mission participants represented such diverse firms as Whirlpool, General Motors, Caterpillar, Guardian Industries, Embraer, Cummins, and Abbott Laboratories.

Compulsory Licensing

¶3. (SBU) The Chairman of the Council, Tom Catania (representing Whirlpool) and Mark Smith (the Council's Director) led off the May 9 meeting with Minister Jorge and his team by noting their concerns about the GOB's recent decision to issue a compulsory license for Stocrin (efavirenz), an AIDs anti-retroviral drug produced by the U.S. pharmaceutical maker Merck. (Merck had planned to send a representative on the trip but cancelled in the wake of the GOB's May 4 license announcement). Catania and Smith stated that while they recognized Brazil's right to proceed down that path, they thought that a negotiated settlement would have been the best solution, particularly in terms of preserving Brazil's reputation as a country with a positive investment climate.

¶4. (SBU) Minister Jorge replied that he had personally participated in the latter part of the negotiations with Merck and could attest that the atmosphere of trust between both parties had broken down between both parties. The talks began badly, developed badly, and ended badly, he said. While neither side showed any real flexibility, he observed, the climate worsened after Merck's former Brazil chief departed and his replacement arrived three months ago. Given Merck's stance, he said, the GOB felt that it had no choice but to issue the license. Jorge opined that as a former industry labor negotiator - during his tenure at Volkswagen, he conducted contract talks with Lula (at that time a union leader) - it is always a shame when two parties cannot come to terms. This case was especially tragic because the amount the GOB was saving was only US$30 million, a pittance given the potential ramifications for future foreign investment. However, he concluded, Merck "precipitated this situation" and while the GOB was always willing to reopen discussions "the ball was in Merck's court." For his part, Embraer's Henrique Rzezinski (the Chair of the Brazilian counterpart to the Council) stated that his side of the Council stood ready to help facilitate further talks. In closing, Jorge praised the conducted of Abbott Laboratories, which, he said, in the 2005 round of talks with the GOB on retroviral pricing had been much more accommodating.

¶5. (SBU) Comment. It appears that both Abbott and Glaxo are both close to finalizing deals with the Brazilians on their respective anti-retrovirals, contracts which would afford the GOB substantial price reductions. Meanwhile, Merck is mulling whether to test the waters with Presidential Chief of Staff Dilma Rousseff, arguing that, properly analyzed, its previous offer would be just as cost-effective for the GOB as the compulsory licensing route. End Comment.

Customs and Taxes

¶6. (SBU) Catania and Smith also urged the GOB to simplify its complicated tax system and streamline its clogged import-export system to stimulate greater trade and economic growth. In response, Mario Mugnaini, head of Brazil's Foreign Trade arm, noted that a lot of work had already been done on this score. Imports into Brazil had increased from US$50 billion several years ago to US$100 billion today, something which could not have been achieved had not improvements been made to the country's ports. Mugnaini stated that Brazil was working on its just-in-time "green zones," and that the time goods spent in these areas had declined from an average of 24 hours to 12 hours - and had dropped to 4 hours at the Campinas airport in Sao Paulo. GOB officials were now seeking to expand the "green zone" model in the country's smaller ports. Advances had been made in port security as well, he noted, as it was projected that 98 percent of Brazilian ports would be in compliance with ISPS standards by the end of the year. US Customs and officials at the Port of Santos were collaborating on the Container Security Initiative, he added, with U.S.-bound containers being scanned and pre-cleared prior to departing Brazil. Still, both Mugnaini and Jorge admitted that more work needed to be done to improve port infrastructure, with the latter wryly noting that European and Japanese companies often came in with the same complaints.

¶7. (SBU) On taxes, Catania lamented the fact that Brazil's Byzantine rules and regulations imposed excessive administrative costs on businesses, both foreign and domestic. Many of the companies within the Council would like to use Brazil as a base to manufacture exports destined to other countries, he said, but Brazil's high cost structure sometimes made that goal problematic. Mugnaini and Jorge stated that the Lula administration was working on a tax reform package, but that this legislation would deal mainly with the allocation of VAT tax revenues/responsibilities between the federal and state governments.

¶8. (SBU) Smith made a pitch for increased emphasis on conclusion of a bilateral tax treaty, noting that the signature of a Tax Information and Exchange Agreement during the March 8-9 POTUS visit to Sao Paulo was a good first step. Jorge replied that if it were

up to him, he would sign a bilateral tax treaty "in a minute." However, the person with in the GOB who had the lead on this issue was the Secretary of the Treasury within the Ministry of Finance, he said, and that official was reluctant to agree to any measure which might diminish tax revenues, no matter how small the reduction. Jorge committed to speaking to the Secretary of the Treasury to see whether he could be persuaded to prioritize conclusion of a bilateral tax treaty with the USG.

Comment

¶9. (SBU) On the issues of compulsory licensing, taxes, and infrastructure/customs, the concerns of Council representatives are congruent with those of the USG. As such, it is extremely useful to have private sector voices echoing the points made by both the Ambassador and various high-level USG visitors. Embassy shall continue to coordinate with the Council and other U.S. business advocacy organizations as we seek to expand our trade and investment relations with Brazil.

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